IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 27 OF 2000

Amit Pandurang Khavnekar,
15 years old, represented
herein by his father and
natural guardian, Pandurang
Khavnekar, r/o House No.
Rangolli, Betul,
Salcete, Goa. ... Appellant.

Versus

1. Babaji Katu Desai,
Madimol, Fatorpa, Goa
(House no. not known),

2. Dilkush R. Desai,
H. No.115, Kulvaddo,
Cuncolim, Salcete, Goa, and

3. New India Assurance Co.
Ltd., Jaganath Bldg.,
Jose Inacio Road, above
Mapusa Urban Co-op. Bank
Ltd., Margao, Goa. ... Respondents.

Shri Cleofato Coutinho, advocte for the appellant.

Shri N. N. Sardessai, advocate for respondent no.3.

CORAM : F. I. REBELLO, J.

DATE : 24th July, 2003.

ORAL JUDGMENT

Heard parties.

This Appeal is by a minor, through his natural guardian who was injured in an accident which, according to him, arose out of reckless driving of respondent no.1 and which vehicle was owned by respondent no.2 and insured by respondent no.3.

Respondent nos. 1 and 2 filed their replies

denying that the accident arose on account of rash and negligent driving of respondent no.1. It is set out that some villagers forced respondent no.1 to stop the vehicle. Respondent no.1 was not aware under what circumstances the deceased and his companion fell on the road. Respondent no.3 filed their statement contending that respondent no.1 was, at the relevant time under the influence of alcohol and, as such, had violated the policy conditions and, therefore, respondent no.3 was not liable to pay any compensation. It is admitted that there was a policy and the claim if at all would be to the extent covered by the policy.

2. On behalf of the appellant, C.W.1, the father, examined himself. It is his case that at the relevant time one truck came from behind the cycle on which his son was sitting and dashed against the cycle. The cycle rider fell down underneath the truck and died on the spot. His son sustained injuries. He was taken to the Hospital. Several operations were performed. He deposed to the expenses undergone both in Goa and at the K.E.M. Hospital in Mumbai. In cross-examination he admits that he had not seen the accident taking place. C.W.2 is the appellant, who has deposed that on that day he was travelling by cycle and sitting on the back of the carrier. The cycle was driven by Mahesh and Mahesh was going for tuitions. There was a parked tempo and it was facing Betul. A bus was coming from

the opposite direction and was proceeding from Margao to Betul and he was coming to Betul market to cut his hair. There was a heap of shells on the left side of the road. As there was no sufficient space to go Mahesh stopped the cycle and kept his foot on the said heap of shells. The truck which was proceeding towards Margao side came from the back and gave a dash. He was unconscious. He states that he is unable to use his left hand. The accident took place at 3.45 p.m. He denied the suggestion that Mahesh took the cycle on the heap of shells when the truck came, as a result of which they fell down. He denied that the truck did not dash the cycle. He also denied that they fell by themselves without the truck dashing against them. He denied that the accident took place on account of Mahesh. Kishore Keruskar has been examined as an eye-witness who has deposed that on that date he was buying sugar at the shop. A truck was coming from Rangadi towards Muxer at a fast speed. Mahesh the deceased had stopped the cycle. The truck gave a dash to the cycle from behind. The left side front portion dashed the cycle and the cycle was dragged by the back wheel of the truck. He picked up Amit and took him to a doctor and from there to the Hospicio Hospital and then to Bambolim Hospital. In his cross-examination he states that Mahesh had stopped before the said heap of oyster shells and the heap was in front of the cycle. He denied that the truck did not dash the cycle. He states that the truck stopped after the accident at a distance of about 15 metres. He

could not state whether the driver was drunk. Respondent nos.1 and 2 did not step into the witness box, nor led any evidence. Apart from these witnesses the appellant has examined Dr. Ulhas G. Nachinolkar, who had examined the appellant. He has deposed that the percentage of permanent disability resulting from evaluation was 90%. On behalf of respondent no.3, Shri A. P. Kakodkar was examined, who produced the insurance policy and some documents. No witnesses were examined to prove the contents of the documents, except the insurance policy.

3. The learned Motor Accident Claims Tribunal framed five issues of which issue nos.1 and 2 were whether the appellant proves that the accident arose on account of rash and negligent driving of the truck. The Claims Tribunal answered the two issues in the affirmative. On issue no.5, the Tribunal held that the respondent no.3 was unable to prove that the respondent had driven the vehicle under the influence of alcohol. However, he fixed the compensation at Rs.1,10,000/- and the expenses towards treatment at Rs.12,000/-.

4. It is thus clear that insofar as the finding of rash and negligent driving, that has been confirmed and no appeal has been preferred by respondent nos.1 and 3. Even otherwise, on the issue of rashness and negligence, the findings will have to be sustained.

5. The grievance of the appellant really then would be regarding awarding awarding of compensation. There is a clear finding by Dr. Nachinolkar that permanent disability is assessed at 90%. The learned Claims Tribunal for medical expenses awarded a sum of Rs.7,700/- and plus conveyance has awarded a sum of Rs.10,500/-. I do not propose to interfere with that figure. No amount has been paid towards pain and suffering on which again a sum of Rs.8,000/- is awarded considering the nature of the injury and the treatment. The real issue is of compensation for the injuries suffered. The notional income has to be fixed at Rs.15,000/- and the correct multiplier would be 15. If that be considered, the amount works out to Rs.2,02,500/-. To that has to be added a further sum of Rs.18,500/- as explained earlier. The appellant would, therefore, be entitled to a compensation of Rs.2,02,500/-. A sum of Rs.12,000/- will have to be deducted, which has already been paid. The insurance company to pay or deposit the balance amount within eight weeks from today. The amount deposited to be paid to the claimant alongwith interest as was awarded by the Claims Tribunal and with further such directions as to investment which the Claims Tribunal feels proper.

Accordingly, Appeal partly allowed.

F.I. REBELLO, J.